

## **Objections to interrogatories**

**Argumentative:** "Objection. This discovery request as phrased is argumentative. It requires the adoption of an assumption, which is improper."

Any discovery request that requires the adoption of an assumption is argumentative. This is objectionable as to form. The classic example is "When did you stop beating your wife." This question assumes facts that may not be true, but requires the answer adopt the assumption.

**Already asked, repetitive discovery:** "Objection. This discovery request has, in substance, been previously propounded. (See Interrogatory/Request No. \_\_\_\_.) Continuous discovery into the same matter constitutes oppression, and Plaintiff further objects on that ground. (*Professional Career Colleges v. Superior Court* (1989) 207 Cal.App.3d 490, 493-494 [255 Cal.Rptr. 5, 7-8].)"

Although not a forceful objection, if the defendant continuously seeks the same information, irrespective of the phrasing of the request, it may be grounds for a protective order based upon oppression.

**Attorney client privilege:** "Objection. The request seeks information subject to the attorney-client privilege. The attorney-client privilege is broadly construed, and extends to "factual information" and "legal advice." (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 601 [208 Cal.Rptr. 886, 891].)"

Communications between client and counsel are privileged. They are presumed to be made in confidence, and broadly privileged against from discovery. This is an very broad privilege which extends to “factual information” and “legal advice.”

**Attorney work-product protection:** “This discovery request seeks attorney work product in violation of Code of Civil Procedure sections 2018.020 and 2018.030. (*Cite appropriate case law and/or analysis of how the information sought is derivative in nature.*)”

Code of Civil Procedure section 2018.030 subdivision (a) states, “[a] writing that reflects an attorney’s impressions, conclusions, opinion, or legal research or theories is not discoverable under any circumstances.” Subdivision (b) expands the protection to include any other attorney work-product, “unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in injustice.”

The purpose of this protection is to “[p]reserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable the unfavorable aspects of those cases,” and to “[p]revent attorneys from taking undue advantage of their adversary’s industry and efforts.” (Code of Civ. Proc. section 2018.020.)

In analyzing the work-product privilege, courts have determined that only derivative materials are protected. Derivative work-product is that information created by or resulting from an attorney’s work on behalf of a client that reflects the attorney’s evaluation or interpretation of the law or the facts involved. Nonderivative materials are those that are only evidentiary in character. These are not protected even if a lot of attorney “work” may have gone into locating and identifying them. (*Mack v. Superior Court* (1968) 259 Cal.App.2d 7, 10 [66 Cal.Rptr. 280, 283] .

There is ample case law delineating derivative versus nonderivative work product. Objections into this are should contain case law on point. The following cases will assist in tailoring your work product objection: *Mack v. Superior Court of Sacramento County*; *Williamson v. Superior Court of Los Angeles County* (1978) 21 Cal.3d 829 [148 Cal.Rptr. 39]; *Brown v. Superior Court of Butte County*, (1963) 218 Cal.App.2d 430 [32 Cal.Rptr. 527]; and *Nacht & Lewis Architects v. Superior Court* (1996) 47 Cal.App.4th 214 [54 Cal.Rptr.2d 575].

**Premature disclosure of experts:** “Objection. The interrogatory seeks premature disclosure of expert opinion in violation of Code of Civil Procedure sections 2034.210, 2034.220, and 2034.270. The interrogatory also seeks attorney work-product in violation of Code of Civil Procedure sections 2018.020 and 2018.030. Plaintiff has not decided on which, if any, expert witnesses may be called at trial; insofar as this interrogatory seeks to ascertain the identity, writings, and opinions of plaintiff’s experts who have been retained or utilized to date solely as an advisor or consultant, it is violative of the work-product privilege. (See *South Tahoe Public Utilities District v. Superior Court* (1979) 90 Cal.App.3d 135 [154 Cal.Rptr. 1]; *Sheets v. Superior Court* (1967) 257 Cal.App.2d 1 [64 Cal.Rptr. 753]; and *Sanders v. Superior Court*, (1973) 34 Cal.App.3d 270 [109 Cal. Rptr. 770].)”

It is improper for an interrogatory to seek either the identity, writings or the opinions of an expert prior to the exchange of expert witnesses. (*South Tahoe Public Utilities District v. Superior Court* (1979) 90 Cal.App.3d 135, [154 Cal.Rptr. 1].) Plaintiff attorneys commonly encounter discovery requests which seek medical, biomechanical, or legal conclusions. Often the only source of information to respond to the interrogatory is from an expert witness. Since the work-product protection includes the work-product of an attorney’s employees and agents, it includes the opinions of employees and agents. (*Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648. [151 Cal.Rptr. 399, 410-411].)

**Burdensome, oppressive, overbroad:** “Objection. This discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance, embarrassment, and is oppressive. To comply with the request would be an undue burden and expense on the plaintiff. The request is calculated to annoy and harass plaintiff. (See Code of Civ. Proc. section 2030.090 subd. (b); and *Columbia Broadcasting System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 19 [69 Cal.Rptr. 348, 352].)”

While this is often a valid objection, it is rarely a basis for not providing a response. Before standing on this objection, sincere meet and confer efforts should be made to resolve the issue.

**Collateral source rule:** “Objection. This discovery request seeks information not relevant to the subject matter of this lawsuit and not calculated to lead to the discovery of admissible evidence in violation of the collateral source rule. This request is also an invasion of Plaintiff's right to privacy. (See *Hrnjak v. Graymar* (1971) 4 Cal.3d 725 [94 Cal.Rptr. 623]; *Pacific Gas & Electric Company v. Superior Court* (1994) 28 Cal.App.4th 174 [33 Cal.Rptr.2d 522]; and *Helfend v. SCRTD* (1970) 2 Cal.3d 1 [84 Cal.Rptr. 173].)”

Code of Civil Procedure section 2017.210 permits discovery only of “insurance...[that] may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.” Health insurance is not insurance available to satisfy a judgment or reimburse of payments made to satisfy a judgment. Code of Civil Procedure section 2017.210 was enacted to permit a plaintiff to discover information about a defendant's liability insurance in order to facilitate settlement. The legislative history, context and purpose of Code of Civil Procedure section 2017.210 demonstrate that the section was specifically intended to authorize limited discovery of a defendant's liability insurance coverage and not any other type of insurance. (See *Catholic Mut. Relief Soc. v. Superior Court* (2007) 42 Cal.4th 358 [64 Cal.Rptr.3d 434].)

Furthermore, personal financial information is within the “zone of privacy” protected by the California Constitution, Article I, §1. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656 [125 Cal.Rptr. 553, 555]). The Insurance Information Act and Privacy Protection Act, Insurance Code section 793, et seq., limits the disclosure of information in connection with insurance transactions. (*Griffith v. State Farm Mutual Auto Ins. Co.* (1990) 230 Cal.App.3d 59, 65-71 [281 Cal. Rptr. 165, 167-171].) “Privileged information” refers to any individually identifiable information that both “(1) relates to a claim for insurance benefits...(2) is collected in connection with or in reasonable anticipation of a claim for insurance benefits...” (Ins. Code section 791.02 subd. (v).)”

Unless the case involves an exception to the collateral source rule (Civil Code section 3333.1 or Government Code section 985), an objection should be asserted to providing *any* information about health insurance, health insurance policies or payments made by a health insurance or other insurance company, including an objection to Form Interrogatory No. 4.1.

Asserting such an objection is particularly important in today's climate in which some judges have interpreted *Hanif v. Housing Authority of Yolo County* (1988) 200 Cal.App.3d 635 [246 Cal.Rptr. 192] to require a post-verdict hearing to reduce plaintiff's medical bills to the amount actually paid. CAALA members and an increasing number of bench officers do not agree that the *Hanif* case gives the defendant a right to such a post-trial hearing or reduction, which effectively abrogates the collateral source rule.

Counsel should begin educating the judge with respect to this issue during discovery, rather than waiting until after a verdict for plaintiff. Furthermore, a more persuasive argument can be made that there is no evidentiary basis for a post-trial ruling by the judge where there is no admissible evidence of what the insurance company paid on behalf of its insured.

**Equally available:** “Objection. The information sought in this discovery request is equally available to the propounding party. (See Code of Civ. Proc. section 2030.220 subd. (c); and *Alpine Mutual Water Co. v. Superior Court* (1968) 259 Cal.App.2d 45 [66 Cal.Rptr. 250].)”

A party has an obligation to make a reasonable and good faith effort to obtain requested information, “except where the information is equally available to the propounding party.” (Code of Civ. Proc. section 2030.220 subd. (c).)

**Irrelevant:** “Objection. Irrelevant. Plaintiff’s \_\_\_\_\_ is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. (Code of Civ. Proc. section 2017.010.)”

Again, this may be an objection worth stating, but is an objection which a court generally is not likely to sustain. Broad discovery is permissible by both parties, and a relevancy objection in discovery is largely disfavored.

**Medical records/medical history:** “Objection. This discovery request seeks to discover plaintiff’s medical history and/or treatment which is completely unrelated to the issues in this litigation in violation of plaintiff’s constitutionally protected right to privacy under Article I, Section I of the California Constitution. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842 [239 Cal.Rptr. 292, 299]; and *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014-1016 [9 Cal.Rptr.2d 331, 335].)”

To require plaintiff to delineate his or her entire medical history is not reasonably calculated to lead to the discovery of admissible evidence, and overbroad. (*Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553, 557 [149 Cal.Rptr. 564, 566].) The disclosure of medical history and medical records cannot be compelled even though they may, in some sense, be relevant to the substantive issues of litigation. The medical records must be directly relevant to the lawsuit. (*In re Lifschutz* (1970) 2 Cal.3d 415, 435 [85 Cal.Rptr. 829, 842].)”

In an injury case, the injured parties privacy rights are subordinate to the right of discovery, but only as to relevant medical history. Plaintiffs can still assert their right of privacy to protect the disclosure of medical information not directly relevant to the lawsuit. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842 [239 Cal.Rptr. 292, 299].) This applies to mental health records in an injury claim where only “garden variety” emotional distress is claimed. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014-1016 [9 Cal.Rptr.2d 331, 334-336].)

**More than thirty-five special interrogatories:** “Objection. This interrogatory fails to comply with Code of Civil Procedure section 2030.030 subdivision (b) as the propounding party has exceeded the limit of special interrogatories.”

A party may not serve more than thirty-five (35) total special interrogatories without a supporting declaration setting forth the need for the additional requests. (Code of Civ. Proc. section 2030.030.) Absent a declaration, the responding party is still obligated to respond to the first thirty-five (35) special interrogatories. (Code of Civ. Proc. section 2030.030 subd. (c).)

**Prefatory instructions and definitions:** “Objection. This set of discovery utilizes preliminary instructions and relies on preliminary/introductory definitions in violation of Code of Civil Procedure section 2030.060 subdivision (d).”

Written discovery sets often have prefatory instructions and definitions. This is improper. (Code of Civ. Proc. section 2030.060 subd. (d).) Definitions are proper, but must appear in the interrogatory itself. (*Id.*) In response, state an objection in each and every request. (Code of Civ. Proc. section 2030.210 subd. (a)(3).)

**Preparing a defendant’s case and legal contentions:** “Objection. This discovery request seeks the legal reasoning and theories of plaintiff’s contentions. Plaintiff is not required to prepare the defendant’s case. (*Sav-On Drugs, Inc. v. Superior Court of Los Angeles County* (1975) 15 Cal.3d 1, 5

[123 Cal.Rptr. 283, 286].). A plaintiff is not required to prepare the case of his opponent. (*Ryan v. Superior Court of Los Angeles County* (1960) 186 Cal.App.2d 813, 819, [9 Cal.Rptr. 147, 151].)"

While it is be proper to discover a plaintiff's legal contentions, the legal reasoning or theories behind the contentions are not discoverable. (*Sav-On Drugs, Inc. v. Superior Court of Los Angeles County* (1975) 15 Cal.3d 1, 5 [123 Cal.Rptr. 283, 287].) A party is not obligated to perform legal research for another party. (*Id.*)

**Subparts, compound, conjunctive, or disjunctive:** "Objection. This interrogatory contains subparts, or a compound, conjunctive, or disjunctive question in violation of Code of Civil Procedure section 2030.060 subdivision (f)."

**Social Security Information:** "Objection. A party's social security number is "clearly irrelevant to the subject matter of the action." (*Smith v. Superior Court of San Joaquin County* (1961) 189 Cal.App.2d 6, 9, 13, [11 Cal.Rptr. 165, 168, 170].)"

**Tax returns and W-2s:** "Objection. Information regarding tax returns, including income tax returns, W-2 and/or 1099 forms, is privileged under federal and state law. (See *Webb v. Standard Oil Co.* (1957) 49 Cal.2d 509 [319 P.2d 621]; *Brown v. Superior Court* (1977) 71 Cal.App.3d 141 [139 Cal.Rptr. 327]; *Aday v. Superior Court* (1961) 55 Cal.2d 789 [13 Cal.Rptr. 415]; *Schnabel v. Superior Court* (1993) 5 Cal.4th 704 [21 Cal.Rptr.2d 200].) This privilege is to be broadly construed. (*Sav-on Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 6-7 [123 Cal.Rptr. 283, 287].)"

**Compilation required:** "Objection: The interrogatory would necessitate the preparation of a compilation, abstract, audit or summary from documents in plaintiff's possession; because such preparation would be similarly burdensome and/or expensive to both the propounding and responding parties, plaintiff herewith offers to permit review of the following documents, \_\_\_\_\_, from which propounding party can audit, inspect, copy or summarize. Responding party will make said documents available for review upon reasonable request. (Code of Civ. Proc. section 2030.230; and *Brotsky v. State Bar of California* (1962) 57 Cal.2d 287 [19 Cal.Rptr. 153].)"

**Continuing interrogatory:** "Objection: The question requires the responding party to supplement an answer to it that was initially correct, thus constituting a "continuing" interrogatory in violation of Code of Civil Procedure section 2030.060 subd. (g)."